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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )  
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Implementation of the )  
Pay Telephone Reclassification )  
and Compensation Provisions of )  
the Telecommunications Act of 1996 )  
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CC Docket No. 96-128

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**COMMENTS OF CITIZENS UNITED FOR REHABILITATION OF ERRANTS AND  
THE COALITION OF FAMILIES AND FRIENDS OF PRISONERS OF THE  
AMERICAN FRIENDS SERVICE COMMITTEE**

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Citizens United for Rehabilitation of Errants (“CURE”) and the Coalition of Families and Friends of Prisoners of the American Friends Service Committee (“AFSC”) submit these comments in response to the Public Notice (“Notice”) released by the Federal Communications Commission (“Commission” or “FCC”) in the above-captioned docket. The Notice seeks information to update and refresh the record on inmate payphone issues.<sup>1/</sup>

**INTRODUCTION AND SUMMARY**

CURE and AFSC are dedicated to promoting the rehabilitation of prison inmates, and they strongly believe that maintaining ties to family members and communities is crucial to the

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<sup>1/</sup> The Common Carrier Bureau Asks Parties to Update and Refresh Record for the Inmate Payphone Proceeding, CC Docket No. 96-128, Public Notice, DA 99-841, (rel. May 6, 1999) [hereinafter Public Notice].

rehabilitative process. Unfortunately, consumers who need to communicate with family and friends in correctional facilities are generally are denied access to competitive telephone services.

CURE and AFSC respectfully suggest that this proceeding should focus on finding ways to improve services to consumers rather than on removing the few constraints governing the charges collected by inmate phone providers. The Commission's commitment to opening telecommunications markets to competition has cut costs for many services and created new opportunities for innovation,<sup>2/</sup> and CURE and AFSC are confident that the same pro-competitive, pro-consumer policies that have produced such dramatic benefits in other areas would yield similar results if applied to inmate pay phone services.

The Commission should consider imposing interim interstate rate caps until systems that can accommodate consumer choice can be implemented. In any event, the Commission should not preempt state-led efforts to constrain inmate calling rates. These ceilings are an imperfect means of keeping rates in check, but their removal could increase the uneconomic burden of exorbitant rates charged for collect calls from inmates. The Inmate Calling Service Providers Coalition (the "Coalition") has not shown that its proposal to add a \$.90 surcharge on top of existing excessive rates is required to recover the costs of handling inmate calls, and this proposal should be rejected. CURE and AFSC endorse a thorough examination of the costs

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<sup>2/</sup> See Federal Communications Commission's Fiscal Year 2000 Budget Estimates Before the Subcomm. on Commerce, Justice, State, and the Judiciary of the House Comm. on Appropriations, 106th Cong. (1999) (statement of William E. Kennard, Chairman, FCC) (available at <<http://www.fcc.gov/Speeches/Kennard/Statements/stwek923.html>>)[hereinafter Kennard] (observing that the Commission's "primary role must be to continue opening markets to competitors to bring more choices at affordable prices to all Americans").

associated with inmate calling, including an inquiry into whether incumbent local exchange carriers (“LECs”) have ended cross-subsidies and discrimination in these services.

## DISCUSSION

In recent years, the FCC has concentrated on fostering competition and phasing out rate regulation, yet the focus of the Notice appears aimed at reinforcing the existing system’s emphasis on monopoly provision of inmate phone services rather than on introducing competition or moving rates closer to cost.<sup>3/</sup> The Commission would best serve the interests of both consumers and inmate phone service provider by applying the same pro-competitive approach used in other areas of telecommunications policy to this proceeding.<sup>4/</sup>

The rates charged to the recipients of collect calls from inmates are extraordinarily high. While the rates may be capped, the ceiling is usually placed at the highest tariff rate for 0+ collect calling in the state.<sup>5/</sup> States generally tax these phone calls by extracting massive commissions, which are added to the tariff charge.<sup>6/</sup> The impact of excessive inmate calling charges can be devastating for inmates’ families, who often have little money and are forced to

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<sup>3/</sup> See Public Notice, supra note 1, at 1-2

<sup>4/</sup> See Kennard, supra note 2 (citing the challenges to the Commission as how to “promote competition, foster innovation, and help bring the benefits of 21<sup>st</sup> Century telecommunications to all Americans”). Emphasis added.

<sup>5/</sup> See Joint Legislative Audit and Review Commission of the Virginia General Assembly, Review of the Department of Corrections’ Inmate Telephone System, House Doc. No. 70 at 26-67 (1997) [hereinafter Virginia Report]. The Virginia Report is significant because it is the most comprehensive legislative study conducted on inmate telecommunications. While it is written from the perspective of state corrections authorities, it is insightful.

<sup>6/</sup> See id. at 32. States in the Southeastern United States charge commissions between twenty and sixty-three percent, with most states charging more than forty-five percent. See id.

devote a huge proportion of their total income to paying for collect calls from prison. Many family members are unable to pay, and their telephone service is sometimes disconnected.<sup>7/</sup>

Excessive charges for collect calls from inmates exact a heavy toll on society as well as prisoners, their friends, and their families. Corrections experts across the country increasingly recognize the importance of maintaining connections with the outside world to the successful rehabilitation of convicted felons.<sup>8/</sup> Most correctional facilities have adopted policies allowing higher levels of telephone use by inmates, but they have done little or nothing to introduce competition or reduce prices, and rates have been raised in a number of instances.<sup>9/</sup>

The Commission understandably has been reluctant to regulate telecommunications services available to inmates, instead deferring to state corrections authorities.<sup>10/</sup> The Commission has, however, moved to protect consumers from abusive behavior.<sup>11/</sup> Technological advances and the introduction of competition have benefited consumers of many types of telecommunications services, but the “market” for telecommunications services for inmates and their loved ones remains characterized by the absence of any meaningful choice.

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<sup>7/</sup> See id. at 18. Stories of eight-month long disconnects and phone bills that run into the thousands of dollars are common. See id.

<sup>8/</sup> See id. at 2.

<sup>9/</sup> See id. at 17. While telephone rates are falling dramatically for almost every class of service across the country, rates increased for collect calls from prison facilities.

<sup>10/</sup> Billed Party Preference for InterLATA 0+ Calls, CC Docket No. 92-77, Second Report and Order and Order on Reconsideration, FCC 98-9, 13 FCC Rcd 6122, 6156, para. 59 (1998)[hereinafter Second Report and Order].

<sup>11/</sup> See id. at 6157, para. 60.

This discussion will describe how prison payphones generally work, respond to the questions put forth by the Commission in its Public Notice, and make recommendations as to how the Commission can best serve the public interest in consumer protection.

### **Telecommunications Services for Prison Inmates**

Policies related to inmate telephone access vary from state-to-state, and different correctional facilities in the same state may apply the same policies differently. The availability of telecommunications services in jails and prisons is not governed by any uniform standard or settled case law, largely because inmate telephone use has been considered a privilege rather than a right.<sup>12/</sup> As a result, some correctional institutions allow relatively free and unlimited access to the telephone, while others are quite restrictive.<sup>13/</sup>

Corrections officials or state procurement administrators typically make telecommunications services available to inmates by issuing a request for proposal (“RFP”) outlining the needs and requirements of the jails or prisons where the services will be offered and asking private vendors to submit bids. The RFP process usually prioritizes such items as the amount of commission that the state will receive from each call and controls on communications rather than the consumer interest in just and reasonable rates. Competition among vendors is

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<sup>12/</sup> See Virginia Report, supra note 5, at 2. The Federal Bureau of Prisons also contend that inmate telephone use is a privilege, not a right. See id.

<sup>13/</sup> See id. Florida and Virginia are examples of states with relatively few restrictions. Texas, on the other hand, limits inmates to only one five-minute collect call every three months. See id.

generally robust, with many providers submitting bids.<sup>14/</sup> After the bidding process is complete, the contract is typically awarded to a single vendor under an exclusive arrangement.

State law and each prison system's administrative practice and procedure make up the bulk of the governing authority related to prison inmate telecommunications. The FCC, however, maintains some authority through Sections 226 and 276 of the Communications Act. Under Section 226, the Commission is authorized to regulate operator service providers.<sup>15/</sup> Inmate service providers fall under this classification to the extent that they require either an automated or live assistance to arrange for billing or call completion.<sup>16/</sup> The Commission has used this authorization only sparingly, in order to make sure consumers are protected by requiring the disclosure of rate information.<sup>17/</sup>

Under Section 276, the Commission is authorized to ensure that the Regional Bell Operating Companies ("RBOCs") do not discriminate against other payphone providers.<sup>18/</sup> The definition of payphone services within this section includes the provision of inmate telephone service.<sup>19/</sup> This section is designed to govern dealings between interconnecting carriers in a

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<sup>14/</sup> In Virginia, for example, more than twenty vendors responded to their RFP when it was issued in 1991. See id. at 4.

<sup>15/</sup> See 47 U.S.C. 246.

<sup>16/</sup> See 47 U.S.C. 226(a)(7).

<sup>17/</sup> See Second Report and Order, supra note 10, at 6156, para. 59.

<sup>18/</sup> See 47 U.S.C. 276.

<sup>19/</sup> See 47 U.S.C. 276(d).



manner that will help insure the development of a competitive marketplace. The Commission has previously resisted attempts to regulate the relationship between the carriers and end-users.<sup>20/</sup>

While the Commission has never used its regulatory oversight authority with regard to calls by prison inmates, it has acted to safeguard the recipients of collect calls from inmates. In the Second Report and Order and Order on Reconsideration, the Commission noted that the recipients of collect calls “require additional safeguards to avoid being charged excessive rates from a monopoly provider.”<sup>21/</sup> In the Second Report and Order, the Commission adopted rules requiring disclosure of rates by providers of operator services for prison inmate phones.<sup>22/</sup>

Inmate phone services are obviously a distinct telecommunications market segment. They are not precisely operator services or payphones, despite sharing elements in common with both. The Commission’s regulatory approach, consequently, should be specifically tailored to telecommunications services for prison inmates. Technical innovations that can advance both the penalogical interests of corrections authorities and the interests of consumers in better service and lower rates should be promoted. Currently available innovations include the use of dial-around calling, personal 800 numbers, debit cards, and other means. States and carriers should be encouraged to offer improved services at lower user rates rather than receiving guaranteed rate supports without any incentive to improve services or lower costs.

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<sup>20/</sup> See Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Order on Reconsideration, FCC 96-439, 11 FCC Rcd 21233, 21269, para. 72 (1998) [hereinafter Payphone Order on Reconsideration].

<sup>21/</sup> Second Report and Order and Order on Reconsideration, *supra* note 10, at 6157, para. 60.

<sup>22/</sup> See 47 CFR §64.710.

## State Ceilings

The Notice first seeks comment on the validity of state-imposed rate ceilings.<sup>23/</sup> The Coalition has suggested that state ceilings may prevent providers from recovering the costs of doing business in a violation of section 276 of the 1996 Act.<sup>24/</sup> The Coalition cites an estimated thirty states that impose ceilings on these rates.<sup>25/</sup> What they neglect to mention is that these rates are governed by contracts negotiated between the inmate phone providers and prison systems, and these contracts usually take the form of exclusive services agreements. This means the terms of the contract are outside of the scope of Section 276.<sup>26/</sup> Furthermore, through the negotiation process, providers are able to set rates, terms, and conditions voluntarily. If costs exceed rates, the inmate phone providers have no one but themselves to blame, because they are free to bid or not to bid when prison and jail systems solicit proposals to provide inmate services.

Furthermore, removal of existing rate ceilings would eliminate the limited protection that consumers rely on today. Without rate ceilings, nothing would stop inmate phone providers from gouging the recipients of inmate calls even more egregiously than under the existing system's exorbitant rates. Neither inmates nor call recipients can choose an alternative carrier, so inmate phone providers plainly have sufficient market power to increase operator surcharges and pre-minute rates to supercompetitive levels in the absence of rate ceilings.

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<sup>23/</sup> See Public Notice, supra note 1, at 1-2.

<sup>24/</sup> See id.

<sup>25/</sup> See id. Most states, however, utilize exclusive service agreements that give monopoly power to inmate service providers.

<sup>26/</sup> See Payphone Order on Reconsideration, supra note 20, at 21269, para. 72.

The Coalition suggests that the Commission should preempt state commissions from imposing rate ceilings. In Illinois Public Telecommunications Association, Inc. v. Federal Communications Commission, the D.C. Circuit held that the 1996 Act expressly gave the Commission authority over interstate payphone rates.<sup>27/</sup> The FCC's order implementing the provision, however, recognized an exception where a "particular state could demonstrate that competition would not constrain prices, because, for example, payphones at certain locations could be priced at monopoly rates."<sup>28/</sup> This exception plainly applies to the exclusive services agreements between inmate phone providers and correctional facilities, because the literally captive audiences who use these services have no other choice. Consequently, the state ceilings facilitate the purpose of federal regulation in this area rather than hindering it. Additionally, the Coalition has not met any of the burdens required to justify preemption or forbearance.<sup>29/</sup>

Instead of removing the state ceilings, CURE and AFSC recommend that the FCC impose an interstate rate cap as an interim measure until consumer choice can be implemented for prison telecommunications. An interstate cap would limit the substantial disparity in rates

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<sup>27/</sup> 117 F.3d 555, 562 (D.C. Cir. 1998).

<sup>28/</sup> See Illinois Pub. Telecommunications Assn, Inc. v. FCC, 117 F.3d at 560 (citing the Commission's findings in the First Payphone Order, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Report and Order, FCC 96-399 (rel. Sept. 20, 1996)).

<sup>29/</sup> See 47 U.S.C. §160.

paid by consumers for interstate as opposed to intrastate calls,<sup>30/</sup> providing an effective and timely solution to the significant problem of excessive charges in the inmate calling market.<sup>31/</sup>

### **Additional Compensation Mechanisms for Providers**

The Notice requests comment on the compensation mechanisms for inmate caller service providers.<sup>32/</sup> The Coalition proposes adding a \$.90 compensation element to insure that providers are receiving fair compensation under Section 276 of the 1996 Act. Section 276 is designed to insure that the RBOCs do not leverage their market power to an unfair competitive advantage.<sup>33/</sup> While the Act does provide for fair compensation,<sup>34/</sup> CURE and AFSC urge the Commission to consider the context of the provision, which was designed to address compensation from other carriers, not consumers. Any Commission action should take this purpose into account so as to more fairly distribute the already burdensome rates charged to the families of inmates among various carriers rather than simply adding an additional tax burden on the backs of consumers.

Additionally, this provision cannot be applied in situations, including the provision of inmate phone services, where providers are free to bid on a contract to provide services. Where

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<sup>30/</sup> The wide disparity between interstate and intrastate rates demonstrates the types of drastic rate increases that could be expected in the event rate caps are removed.

<sup>31/</sup> See Comments of CURE on Second Further Notice of Proposed Rulemaking, CC Docket 92-77 at 5-9 (July 16, 1996).

<sup>32/</sup> See Public Notice, *supra* note 1, at 2.

<sup>33/</sup> See 47 U.S.C. §276(a).

<sup>34/</sup> See 47 U.S.C. §276.

providers agree to provide inmate phone services based on a particular set of terms and conditions, they should be bound by the agreement, as the Commission has found in the past.<sup>35/</sup>

### **Costs of Service**

The Commission also seeks up-to-date information regarding the costs of serving inmate facilities, with a special emphasis on bad debt and debit cards.<sup>36/</sup> The cost of providing inmate phone services is difficult to ascertain, because data is not readily available, and even where cost information has been disclosed, it generally is not broken down into the level of detail that would permit an analysis of the cost of each component. The Commission should attempt to gather this data in a meaningful and analytically useful manner as it moves forward with this proceeding.

Bad debt is probably a significant factor in the costs of providing inmate phone services, and CURE and AFSC agree that effective measures should be pursued to address this issue. High rates leave financially strapped families unable to afford even basic phone service and unable to pay their bills.<sup>37/</sup> Where costs are high and choice is limited, these consumers often are forced to forego phone service altogether and do not pay the amount due.<sup>38/</sup> Consequently, in order to address the bad debt problem, the Commission should look at inmate telecommunications services within the context of universal service policy.<sup>39/</sup> In addition, CURE and AFSC

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<sup>35/</sup> See Payphone Order on Reconsideration, supra note 20, at 21269, para. 72.

<sup>36/</sup> See Public Notice, supra note 1, at 2.

<sup>37/</sup> See Virginia Report, supra note 5, at 8.

<sup>38/</sup> See generally JOHN HARRIGAN & LODIS RHODES, THE EVOLUTION OF UNIVERSAL SERVICE IN TEXAS, LYNDON B. JOHNSON SCHOOL OF PUBLIC AFFAIRS POLICY RESEARCH REPORT SERIES NO. 116 (1995) (analyzing data of the phoneless population).

<sup>39/</sup> See MILTON L. MUELLER, JR., UNIVERSAL SERVICE: COMPETITION, INTERCONNECTION, AND MONOPOLY IN THE MAKING OF THE AMERICAN TELEPHONE SYSTEM 172-73 (1997) (placing phonelessness into the context of public policy choices designed to promote universal service).

support expanded use of debit cards as a means of avoiding bad debt. Pre-paid debit accounts cannot, by definition, accrue debt, and they open the possibility of competitive services for inmates and their families and friends.

### **Cross-Subsidization and Discrimination**

Finally, the Notice seeks comment on whether the incumbent LECs have discontinued all intrastate and interstate subsidies and discrimination with respect to their inmate payphone services.<sup>40/</sup> The issues of cross-subsidization and discrimination between carriers underscore the need for accurate cost information. CURE and AFSC have seen collect interstate long distance bills that are exponentially higher than collect intrastate calls. If cross-subsidization is occurring, then CURE and AFSC would support appropriate enforcement measures, especially in light of the fact that savings derived from these rate differentials are not being passed on to consumers.

### **CONCLUSION AND RECOMMENDATIONS**

CURE and AFSC believe the benefits of competition in telecommunications can be brought to the market for inmate phone services. Telecommunications services provide valuable rehabilitative support. Additionally, the Commission should remember that inmate families and friends are not incarcerated, but they are the ones paying the high rates of the collect calls. These one million-plus families are generally on the lowest end of the economic ladder and it is truly unjust and unreasonable to charge them the highest possible telephone rates. Prisoners and their loved ones should not be seen merely as a profit center for carriers and correctional facilities.

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<sup>40/</sup> See Public Notice at 2.

Along these lines, CURE and AFSC urge the Commission to frame policy in a manner that minimizes the rates paid by these financially strapped consumers, provides strong enforcement for consumer protection, invites the utilization of technological alternatives and innovations, and encourages and move towards choice and competition.

Respectfully submitted

**CITIZENS UNITED FOR REHABILITATION  
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June 21, 1999

**CERTIFICATE OF SERVICE**

I hereby certify that on this 21st day of June, 1999, a true and correct copy of the foregoing **Comments of Citizens United for Rehabilitation of Errants And the Coalition of Families And Friends of Prisoners of the American Friends Service Committee**, was mailed, first-class, postage prepaid, or hand delivered to:

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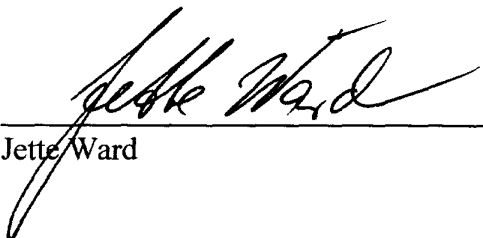
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